

FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re:) ADV. CASE NO. 98-90181-H13
Dianne Mannion Wepsic,) AMENDED MEMORANDUM DECISION
Debtor.)
Related Bankruptcy Court)
Case No. 97-15509-H13)
_____))
Dianne Mannion Wepsic,)
Plaintiff,)
v.)
Jackie Josephson,)
Defendant.)
_____)

At issue is debtor Diane Mannion Wepsic's ("Wepsic") request for her costs and attorney fees pursuant to 15 U.S.C. § 1640(a).

This Court has jurisdiction to determine this matter pursuant to 28 U.S.C. §§ 1334 and 157(b)(1) and General Order No. 312-D of the United States District Court for the Southern District of California. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B) and (K).

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1 of the case, the customary fee, whether the fee is fixed or
2 contingent, time limitations imposed by the client or the
3 circumstances, the amount involved and the results obtained, the
4 experience, reputation, and ability of the attorneys, the
5 "undesirability" of the case, the nature and length of the
6 professional relationship with the client, and awards in similar
7 cases.

8 Wepsic's attorneys billed a combined 263.10 hours on this
9 case. Deborah Raymond ("Raymond") billed 87 hours at \$195.00
10 per hour for a total of \$16,916.25. Louis G. Bruno ("Bruno")
11 billed a total of 176.10 hours at \$195.00 per hour for a total
12 of \$34,339.50.

13 "The starting point for an award of attorneys' fees is to
14 multiply the number of hours reasonably spent on the case by a
15 reasonable hourly rate." In re Auto Parts Club, Inc., 224 B.R.
16 445 (Bankr. S.D. Cal. 1998) (citations omitted). The Court
17 finds that the \$195.00 rate charged by Wepsic's attorneys is
18 indicative of the prevailing market rate in the community and is
19 therefore reasonable. The Court finds, however, that the number
20 of hours billed were duplicative, excessive and unnecessary.

21 A review of the record in this case, as well as the
22 attorney time sheets and the supporting pleadings, leads the
23 Court to conclude that this was a relatively straightforward
24 TILA case including issues on the finance charge, the APR, the
25 number of payments, and the faulty notice of rescission. With
26 the exception of the latter, the other issues revolve around
27 simple calculations, some of which are routinely performed by a
28 computer program. Thus, it does not appear to the Court that

1 two attorneys were needed to litigate this case. To the extent
2 the fees of Wepsic's attorneys were duplicative, the Court will
3 award only one fee. The Court also declines to award attorney's
4 fees for the time Wepsic's attorneys spent conferring with each
5 other, or reviewing each other's work. See Daggett v.
6 Kimmelman, 811 F.2d 793 (3rd Cir. 1987).

7 Mr. Bruno was associated into this case because of his
8 "expertise" in the TILA area. However, the Court concludes that
9 an excessive amount of time was spent researching and drafting
10 the pleadings in this matter. Compensation for significant
11 amounts of time which are billed for general education is
12 generally not reasonable. In re Maruko, 160 B.R. 633 (Bankr.
13 S.D. Cal. 1993). In addition, both attorneys billed for
14 matters unrelated to the TILA violations. Both attorneys also
15 charged their regular hourly rates for attending relief from
16 stay matters, the continued confirmation hearing, and the
17 refinancing of Wepsic's property. These fees are contrary to
18 the United States Trustee Guidelines in Chapter 13 cases which
19 allow a flat rate of \$325.00 for opposition to relief from stay,
20 \$250.00 for stipulated orders re refinancing of real property,
21 and \$75.00 for appearances at post-confirmation hearings, and
22 the attorneys have failed to demonstrate why either should
23 receive in excess of the presumptive or Guideline fee.

24 The Court finds the fees excessive given that this case
25 ended with the summary judgment motion. There were a total of
26 seven hearings in this case, with only two being substantive
27 (i.e., argument for the motion on summary judgment and argument
28 for attorney fees). The Court also finds the amount of time

involved is disproportionate to the results obtained. The Court's reasoning for disallowing some of the fees is set forth below:

A. Duplicative Time Entries: The Court finds the following entries duplicative and not requiring the work of two attorneys.

1. Court Appearances: Both Raymond and Bruno appeared at the 6/12/98; 7/22/98; and 10/28/98 court hearings. Raymond billed 3.3 hours; 1.5 hours and 1.0 hours respectively for a total of 5.8 hours at \$195.00 per hour (\$1,131.00). In addition to billing for her appearances, Raymond billed 1.4 hours on 7/21/98 preparing for oral argument (presumably for the hearing on July 22, 1998). All Raymond's time is disallowed. Bruno also billed 2.75 hours on 6/12/98 for his appearance and meeting with counsel after the appearance. Because the entry is lumped,¹ the Court deducts one hour from Bruno's time. The amount of \$1,599.00 (8.2 hours x \$195.00) is disallowed.

2. Counsel Conferences: Bruno billed 3.75 hours on 6/3/98; 3.5 hours on 6/18/98; and 3.92 hours on 8/13/98 for a total of 11.17 hours at \$195.00 per hour (\$2,178.15). These conferences with co-counsel Raymond are duplicative and the amount of \$2,178.15 is disallowed.

3. Research and Drafting: Raymond billed 1.2 hours on 6/18/98; 1.1 hours on 6/22/98²; .3 hours on 6/26; 3.3 hours on 7/1/98; 2.5 hours on 7/2/98; 2.8 hours on 7/17/98; 2.5 hours on

¹ A number of the time entries of both Raymond and Bruno were lumped. Therefore, it was impossible for the Court to determine in most cases how much time was legitimately spent on each task. In many instances, the Court disallows the entire amount that is lumped.

² The Court allows .2 on this date for another task.

1 7/19/98; 2.3 hours on 7/20/98; and 2.0 hours on 8/13/98 for a
2 total of 18.0 hours at \$195.00 per hour (\$3,510.00). Raymond
3 spent much of this time either duplicating the research efforts
4 of Bruno or redrafting his work. The amount of \$3,510.00 is
5 disallowed.

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7 B. Excessive Time Entries.

8 1. Complaint: The time for drafting the complaint in this
9 matter is excessive. Bruno billed 2.5 hours on 4/2/98; 1.0
10 hours on 4/3/98; 3.5 hours on 4/4/98 and on that same date
11 billed 3.0 hours for "value added fee for prior work" for a
12 total of ten hours. In addition, Raymond billed 1.4 hours on
13 4/7/98 and 4.0 hours on 4/9/98 for a total of 5.4 hours. In
14 total, 15.4 hours at \$195.00 an hour (\$3,003.00) was billed for
15 drafting the complaint. As noted above, the issues in this
16 matter were relatively straightforward. Moreover, the Court
17 fails to comprehend how value added fees for prior work on other
18 cases were necessary for the drafting of a complaint in this
19 case. The Court finds that two hours for drafting the complaint
20 in this matter is reasonable. The amount of \$2,613.00 is
21 disallowed.

22 2. Drafting of Stipulated Facts: Bruno billed 6.5 hours
23 on 6/19/98; 1.5 hours on 6/23/98; 4.5 hours on 6/24/98; and 2.5
24 hours on 6/25/98 for a total of 15 hours at \$195.00 (\$2,925.00)
25 for drafting the stipulated facts in this case. The Court finds
26 this amount excessive given the simplicity of the case. The
27 Court finds that two hours for drafting the stipulated facts in
28 this matter is reasonable. The amount of \$2,535.00 is

1 disallowed.

2 3. Research and Drafting Supplemental Brief: Bruno billed
3 1.0 hours on 7/23/98 and 1.0 hours on 7/27/98 to research two
4 cases specifically cited by this Court and to be addressed in
5 the supplemental brief. In addition, Bruno billed 4.33 hours on
6 7/24/98 for research; 7.0 hours on 7/29/98; 4.0 hours on
7 7/30/98; and 1.0 hours on 8/11/98. Raymond billed 4.4 hours on
8 7/30/98 and .4 hours on 8/4/98. A total of 23.13 hours at
9 \$195.00 an hour (\$4,510.35) was billed for the supplemental
10 brief. The Court finds this amount excessive given the Court's
11 directive to brief the applicability of two cases to the instant
12 matter. Raymond's work appears duplicative as well. The Court
13 finds that five hours for research and drafting the supplemental
14 brief is reasonable. The amount of \$3,535.35 is disallowed.

15 4. Drafting of Summary Judgment Motion: Bruno billed 2.5
16 hours on 6/8/98; 4.0 hours on 6/13/98; 4.5 hours on 6/15/98; 1.5
17 hours on 6/16/98; and 2.5 hours on 6/17/98 for a total of 15
18 hours at \$195.00 per hour (\$2,925.00). The Court finds this
19 amount excessive given the simplicity of the issues and in light
20 of the fact that Jackie Josephson had adequately framed the
21 issues in her prior filed motion for summary judgment. The
22 Court finds that eight hours for drafting the summary judgment
23 motion is reasonable. The amount of \$1,365.00 is disallowed.

24 5. Drafting Order Shortening Time. Raymond billed 1.2
25 hours on 6/24/98 at \$195.00 per hour (\$234.00) for drafting an
26 order shortening time. The Court finds the amount billed
27 excessive. The Court finds that .3 hours is reasonable. The
28 amount of \$175.50 is disallowed.

1 6. Research on Separate Statement of Undisputed Facts.

2 Bruno billed 1.33 hours on 6/24/98 for researching whether a
3 separate statement of undisputed facts applied in federal
4 procedure. The Court finds this amount excessive and
5 unnecessary. The amount of \$259.35 is disallowed.

6 7. Preparing and Filing Certificate of Compliance:

7 Raymond billed .7 hours on 6/5/98 for preparing a two page
8 certificate of compliance (and evidently filing it with the
9 Court). The Court finds this amount excessive and unnecessary.
10 The Court finds .3 hours reasonable. The amount of \$78.00 is
11 disallowed.

12 8. Research and Drafting of Rescission Notice. Bruno

13 billed 8.0 hours on 3/18/98 plus 3.0 hours for value added.
14 Raymond billed .9 hours on 3/19/98 and 3.7 hours on 3/22/98.
15 Raymond billed another 1.2 hours on 3/23/98 for drafting the
16 points and authorities regarding the same. The Court finds that
17 a total of 16.8 hours at \$195.00 per hour (\$3,276.00) for this
18 task excessive. As Josephson's attorney pointed out, the
19 precise contents of the notice of rescission are defined in the
20 Truth in Lending laws. The Court finds that three hours is a
21 reasonable time. The amount of \$2,691.00 is disallowed.

22 C. Unrelated Time Entries.

23 Both Bruno and Raymond have billed for drafting,
24 researching, and making appearances regarding Josephson's motion
25 for relief from stay. The Court finds that Josephson's motion
26 for relief from stay is unrelated to the TILA. Josephson moved
27 for relief from stay because Wepsic was not making payments
28 under the plan. Moreover, there was billing for matters related

1 to the confirmation hearing and refinancing. Besides being
2 unrelated, both Raymond and Bruno billed at their hourly rates
3 for these matters which is contrary to the United States Trustee
4 Guidelines for chapter 13 cases. The total time billed for
5 these matters is disallowed.

6 1. Relief From Stay: Raymond billed .3 hours on 4/3/98;
7 .2 hours on 4/6/98; .3 hours on 4/8/98; .1 hours on 5/6/98; .5
8 hours on 5/13/98; 1.0 hours on 5/19/98; .8 hours on 6/1/98; 4.0
9 hours on 11/23/98; 4.7 hours on 11/28/98; 2.2 hours on 11/29/98;
10 .6 hours on 11/30/98 and 1.5 hours on 12/15/98 for a total of
11 16.2 hours at \$195.00 per hour (\$3,159.00). Bruno billed 3
12 hours on 11/27/98; 1.5 hours on 11/30/98; 1.5 hours on 12/14/98;
13 and 2.33 hours on 12/15/98 for a total of 8.33 hours at \$195 per
14 hour (\$1,624.35). The amount of \$4,783.35 is disallowed.

15 2. Work on Refinance. Bruno billed 3.5 hours on 12/18/98
16 for drafting and filing an order to facilitate a refinance of
17 Wepsic's house. This work is unrelated to the TILA violations
18 and the amount billed is in contravention of the United States
19 Trustee Guidelines. The amount of \$682.50 is disallowed.

20 3. Confirmation Hearing. Raymond billed .7 hours on
21 4/1/98 for attending the continued confirmation hearing in
22 Wepsic's underlying chapter 13 case. In addition, Bruno billed
23 3.0 hours on 3/31/98 for preparation and 6.0 hours on 4/1/98 for
24 his appearance at the continued confirmation hearing. The Court
25 notes that a confirmation hearing in a chapter 13 case lasts no
26 more than a few minutes. Therefore, Bruno's time also appears
27 excessive. Moreover, the Court finds these billings unrelated
28 to the TILA and in excess of the United States Trustee

1 Guidelines. The amount of \$1,891.50 is disallowed.

2 D. Secretarial and Travel Entries:

3 1. Travel Entries: Raymond billed 1.0 hour for travel
4 time for her initial meeting with Bruno on 3/18/98. Although
5 the Court allowed the time billed for the initial meeting, the
6 Court disallows Raymond's travel time in the amount of \$195.00.
7 In addition, Bruno billed 1.5 hours on 7/1/98 for travel time
8 spent delivering documents to counsel. The amount of \$292.50 is
9 disallowed.

10 2. Secretarial: Raymond billed .5 hours on 4/10/98 for
11 preparation of the service of the complaint. Even though she
12 billed for this task at one-half of her hourly rate, the Court
13 finds that the task is secretarial in nature and therefore part
14 of her general overhead. The amount of \$48.75 is disallowed.

15 E. The Amount Involved and the Results Achieved.

16 "[T]he most critical factor' in determining the
17 reasonableness of a fee award 'is the degree of success
18 obtained.'" Carrol v. Wolpoff & Abramson, 53 F.3d 626 6230 (4th
19 Cir. 1995) (citations omitted). Wepsic's attorneys were not
20 totally successful in enforcing her right to rescission. It is
21 apparent that Wepsic's sole purpose behind the filing of this
22 adversary proceeding was to use the rescission remedy to wipe
23 out Josephson's secured claim in her chapter 13 bankruptcy
24 despite the fact that Wepsic had the inability to fulfill her
25 part of the rescission remedy. The Court rejected this all or
26 nothing approach as set forth in its September 1998 opinion and
27 conditioned Wepsic's right to rescind on her ability to return
28 the appropriate portion of the loan proceeds to Josephson.

1 Seven months have elapsed since this Court issued its Memorandum
2 Decision and Wepsic still has not consummated the refinancing of
3 her home. Thus, Wepsic still can not exercise her rescission
4 remedy.

5 The Court questions what benefit Wepsic has received for
6 over \$51,000 in fees. At most, Wepsic is entitled to recover
7 the finance charge and other charges. As far as this Court is
8 aware, Josephson held six months of interest only payments in
9 escrow. The interest only payments were around \$892.00 per
10 month. Wepsic made no other payments on the loan prior to
11 bankruptcy. Although Wepsic has made some post-petition
12 payments, she is more than \$9,600.00 behind in her plan
13 payments. In addition, the "other charges" that Wepsic may be
14 entitled to equal approximately \$6,200.00.

15 In addition to recovering a sum which is substantially
16 lower than the fees in this case, Debtor continues to incur
17 attorney fees and other costs associated with her refinance of
18 her property during this bankruptcy. In sum, the Court finds
19 that even after disallowing a significant portion of the fees as
20 set forth above, the amount involved still greatly outweighs the
21 results obtained. The fees are further reduced by 50%.

22 23 CONCLUSION

24 In sum, the Court finds that Wepsic is entitled to costs in
25 the sum of \$217.27 and attorney fees in the amount of \$11,520.04
26 ($\$51,473.02 - \$28,432.95$ (disallowed fees) = $\$23,040.07 \div 2$
27 (cost-benefit reduction). This Memorandum Decision constitutes
28 findings of fact and conclusions of law pursuant to Federal Rule

1 of Bankruptcy Procedure 7052. Josephson is directed to file
2 with this Court an order in conformance with this Memorandum
3 Decision within ten (10) days from the date of entry hereof.

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5 Dated: August 26, 1999

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7 JOHN J. HARGROVE
United States Bankruptcy Judge

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